IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Crl.MC.No. 2852 of 2005

C.C. NO. 1416/2004 OF JUDL. MAGISTRATE OF FIRST CLASS-I,THODUPUZHA.

PETITIONERS/ ACCUSED:

1. **P.A.THOMAS, S/O.ABRAHAM, AGED 55 YEARS, PADANILATHU VEEDU, MOOLEDAM, PANACHIKKAD VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT.**
2. **SALY MATHEW, S/O.MATHAI, AGED 40 YEARS, MUPRAPILLIL VEEDU, RAMAPURAM BAZAR P.O., RAMAPURAM VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.P.G.JACOB,
ADV. SRI.NIREESH MATHEW.

RESPONDENT/ COMPLAINANT:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. NOBLE MATHEW.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. Koshy, J.

Crl. M.C. No. 2852 of 2005

Dated this the 4th day of December, 2007

Order

Petitioners were prosecution witnesses in C.C.No.252 of 2002 on the file of the Chief Judicial Magistrate, Thodupuzha. While disposing of the above case, it was observed in the judgment that complaint shall be filed against PWs 2 and 5 after making an enquiry under section 340 of the Code of Criminal Procedure since they gave false evidence before the court. On the next day, the very same Chief Judicial Magistrate took cognizance of the case and registered a case as C.C.No.259 of 2004. It is stated in the order as follows:

> "An enquiry contemplated by section 340 Cr. P.C. was conducted in the matter and it has been decided to file a complaint against accused Nos.1 & 2 for offence u/s 193 I.P.C."

Thereafter, case was made over to Judicial First Class Magistrate's Court, Thodupuzha and case was renumbered as C.C. No.1416 of 2004. It is contended that only by judgment dated 30.11.2004 it was observed that the petitioners were suspected of having given false evidence, but, on the next day, it is stated that enquiry under

section 340 was completed and complaint was filed under section 193 IPC and he numbered the case as C.C. No.259 of 2004 and he himself took cognizance also. It is contended that the very same Magistrate who filed the complaint cannot take cognizance. It is also stated that on the very next day of the disposal of the main case, it is stated that enquiry was conducted, but, procedure would show that enquiry as contemplated under section 340 Cr.P.C. was not conducted. Further, it was stated that there was no prima facie case to take prosecution. The allegation in the main case (C.C.No.252 of 2002) was that accused Nos.1 and 2 prepared fake salary certificates of CWs 2 and 3 and produced before the Kerala State Financial Enterprises, Thodupuzha branch and received chitty amount of which accused No.2 was a subscriber. It is found in that case that salary certificates of CW2 and CW5 (petitioners in this case) examined as PWs 2 and 5 proved by A1 and A2 in this case were false. The above salary certificates would show that the present petitioners were working in Nedumkavayal I.T.C. Actually, they were not working in Nedumkavayal I.T.C. If they have produced fake certificates and gave to A1 and A2 in this case, they could have been added as accused in that case, but, not under section 193 IPC taking proceedings under section 320 of Cr.P.C.

Allegation of the prosecution was that accused Nos.1 and 2 committed forgery, cheating, falsely preparing salary certificates stating that these persons (petitioners herein) are working in the Nedumkavayal I.T.C. There is no finding that proceedings under section 340 was taken as it was necessary in the interest of justice. Without such a finding, proceedings cannot be initiated as held by the Apex Court in Shabir Hussain Bholu v. State of Maharashtra (AIR 1963 SC 816). The power under section 340 should be exercised only with great circumspection and when it 'considered necessary' in the interest of justice as held by a Division Bench of this Court in In Re: A.K. Padmanabhan, Ex. M.L.A. (1992 (1) Crime 653). We also note that before taking cognizance of the case by the same Magistrate, who ordered to conduct enquiry under section 340, no enquiry was conducted and he ought to have entrusted the matter to any other Magistrate of the first class having jurisdiction after conducting preliminary enquiry make a complaint in writing after recording a finding that an enquiry shall be made in the interest of justice for finding out whether an offence under section 195 Cr. P.C. was made out or not instead of straight away taking cognizance of the offence under section 193 IPC and making over the case to another Magistrate's court for trial and decision. Taking into account

the overall circumstances of the case, I am of the opinion that the procedure adopted in this case is illegal and there is no point in continuing with the proceedings in C.C.No.1416 of 2004 on the file of the Judicial Magistrate of the first class-I, Thodupuzha and the impugned proceedings are quashed and Crl. M.C. is allowed.

J.B.Koshy
Judge

vaa

J.B. KOSHY,J.

Crl. M.C. No. 2852 of 2005

Order

Dated:4th December, 2007